

OFFICE OF THE CLERK *1 to w*

UNITED STATES COURT OF APPEALS

Marcia M. Waldron
Clerk

FOR THE THIRD CIRCUIT
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March 7, 2002

Mrs. Mary D'Andrea
U.S. District Court for the Middle District of Pennsylvania
Middle District of Pennsylvania
228 Walnut Street
Room 1060
Harrisburg, PA 17108

RE: Docket No. 01-1467
Standard Fire Ins Co vs. Arnold
D. C. CIV. No. 00-cv-568 *J. Lueders*

RECEIVED
HARRISBURG, PA

MAR 11 2002

MARY E. D'ANDREA, CLERK
Per *[Signature]*

Dear Mrs. D'Andrea:

Enclosed is a certified copy of the judgment in the above-entitled case(s), together with copy of the opinion. The certified judgment is issued in lieu of a formal mandate and is to be treated in all respects as a mandate.

(X) We release herewith the certified list in lieu of the record.

Kindly acknowledge receipt for same on the enclosed copy of this letter.

Counsel are advised of the issuance of the mandate by copy of this letter. A copy of the certified judgment is also enclosed showing costs taxed, if any.

Very truly yours,
MARCIA M. WALDRON
Clerk

Dana M. Moore

By: Dana M. Moore
Case Manager

Enclosure

cc:

Ralph D. Oyler, Esq.
Paul F. Lantieri, Esq.

*ack'd
3-11-02 - BTB*

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 01-1467

STANDARD FIRE INSURANCE COMPANY

v.

CHRISTINA M. ARNOLD, EUGENE ARNOLD AND RICK NAUSS

Christina M. Arnold and Eugene Arnold, Appellants

On Appeal from the United States District Court
for the Middle District of Pennsylvania

District Court Judge: The Honorable William W. Caldwell.

(Civil Action No. 00-0568)

Submitted Under Third Circuit L.A.R. 34.1(a)
January 8, 2002

Before: MANSMANN, RENDELL, and FUENTES Circuit Judges.

(Opinion Filed: February 13, 2002)

MEMORANDUM OPINION

FILED
HARRISBURG

MAR 11 2002

MARY E. D'ANDREA, CLERK
Per. 9/8
DEPUTY CLERK

FUENTES, Circuit Judge:

We dispense with a full recitation of the facts since we write only for the parties who are familiar with the facts and circumstances of this case. Briefly, on May 28, 1999, Appellant, Christina Arnold was attacked and seriously injured by her employer's dog while working in her employer's home. After receiving Workers' Compensation benefits, she filed a claim against the employer, Rick Nauss, who was insured under a homeowner's insurance policy issued by Appellee, Standard Fire Insurance Company. On cross motions for summary judgment, the District Court determined that Standard did not owe a duty to defend or indemnify Nauss, based on the Workers' Compensation exclusion contained in the policy. We will affirm.

In ruling on the motions, the District Court determined that the Workers' Compensation exclusion barred any recovery to Arnold. That exclusion bars coverage for bodily injury to someone eligible to receive Workers' Compensation benefits voluntarily provided or required to be provided by the insured. Arnold contends that she did not receive compensation benefits from the insured, Rick Nauss, "in his capacity as a homeowner." Rather, she states that she received benefits "via a workers' compensation policy issued by Princeton Insurance Company to 'Richard D. Nauss; t/a All American Pest Control'". Therefore, she claims, the Workers' Compensation exclusion does not apply.

The District Court disagreed and noted that a sole proprietorship has no existence separate and apart from its individual owner, and that it did not matter that Nauss traded under a name different from his own. See District Court Opinion, page 8, citing, inter alia,

Glidden Company, Inc. v. Department of Labor and Industry, 700 A.2d 555, 558 (Pa. Commw. Ct. 1997). Indeed, Appellant admits in her brief that if Nauss “and his business are one and the same, then the exclusion would apply, and Standard would owe no duty to defend and indemnify.”

The District Court found that, in fact, Rick Nauss and his pest control company are identical, and concluded that because Arnold received compensation benefits from the insured, the Workers’ Compensation exclusion applied, and Standard owed no duty to defend or indemnify. We discern no error in this determination, and we will thus AFFIRM the opinion of the District Court.

TO THE CLERK OF THE COURT:

Kindly file the foregoing Opinion.

/s/ Julio M. Fuentes
Circuit Judge

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 01-1467

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JUDGMENT

This cause came to be heard on the record from the United States District
Court for the Middle District of Pennsylvania and was submitted under Third Circuit
L.A.R. 34.1(a) on January 8, 2002.

(23)
3-12-02
SC
FILED
HARRISBURG

MAR 11 2002

MARY E. D'ANDREA, CLERK
Per STO
DEPUTY CLERK

On consideration whereof, it is now here ORDERED AND ADJUDGED by this Court that the judgment of the said District Court entered January 25, 2001, be, and the same is hereby AFFIRMED. Costs taxed against the appellants. All of the above in accordance with the opinion of this Court.

ATTEST:

Marcia M. Waldron
Clerk

Dated: February 13, 2002

**Certified as a true copy and issued in lieu
of a formal mandate on March 7, 2002**

Teste: Marcia M. Waldron

Clerk, U.S. Court of Appeals for the Third Circuit.